

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FORT WORTH EMPLOYEES' RETIREMENT : 09 Civ. 3701 (JPO) (JCF)  
FUND, et al., :  
Plaintiffs, :  
- against - :  
J.P. MORGAN CHASE & CO., et al., :  
Defendants. :  
- - - - - :

MEMORANDUM  
AND ORDER

JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

This is a securities action brought on behalf of a class of purchasers of mortgage-backed securities issued by J.P. Morgan Acceptance Corporation I. The defendants now seek an order compelling the Employees' Retirement System of the Government of the Virgin Islands ("USVI GERS") to comply with a document subpoena. USVI GERS opposes the application on the grounds that the subpoena is invalid on its face, is overbroad, would impose an undue burden, and seeks irrelevant information.

The Fort Worth Employees' Retirement Fund filed this putative class action in New York State Supreme Court in March 2009, and it was subsequently removed to this Court. On March 10, 2010, the Court granted USVI GERS's motion to be appointed lead plaintiff and to designate its attorneys, Robbins Geller Rudman and Dowd LLP ("Robbins Geller"), as lead class counsel. USVI GERS filed the

First Amended Complaint on April 9, 2010, and the Second Amended Complaint on July 8, 2010. On November 18, 2011, USVI GERS moved to withdraw as lead plaintiff and substitute Laborers Pension Trust Fund for Northern California ("Northern California Laborers"). The Court granted this motion and again appointed Robbins Geller as lead counsel. Northern California Laborers did not file a new complaint, but instead adopted the Second Amended Complaint.

On January 7, 2013, the defendants issued a document subpoena to USI GERS from the United States District Court for the Southern District of California. The documents sought fall into three categories: (1) documents relating to the allegations in the Second Amended Complaint, (2) documents sufficient to reflect USVI GERS's trades in the subject securities, and (3) documents concerning the knowledge of USVI GERS or its investment advisors at the time of its purchases. After some procedural skirmishing, the defendants withdrew the subpoena and issued a substantively similar one from this District on April 17, 2013. Counsel for USVI GERS agreed to accept service at its offices in New York, but it has asserted a variety of objections.

The procedural objections advanced by USVI GERS need not be considered at this juncture because burden and lack of relevance preclude enforcement of the subpoena. Not only is USVI GERS no longer lead plaintiff, it is no longer a member of the class, since

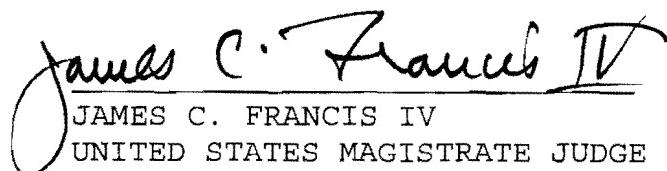
it sold all of its certificates and has not suffered any damages as a result of the investments at issue. (Letter of Susan Goss Taylor dated Nov. 22, 2013, at 8). Thus, the defendants' argument that they should have discovery of USVI GERS as an absent class member for purposes of litigating class certification is not longer viable, and the key case they rely upon, Plumbers' and Pipefitters' Local # 562 Supplemental Plan & Trust v. J.P. Morgan Acceptance Corp. I, No. 08 CV 1713 (E.D.N.Y.) (transcript attached as Exh. M to Letter of David L. Breau dated Nov. 5, 2013), is no longer apposite.

Nor is this result altered by the fact that when Northern California Laborers took over as Lead Counsel, it simply adopted the Second Amended Complaint as drafted by USVI GERS. Northern California Laborers will have to support its claims as well as its motion for class certification with information that it and its counsel, Robbins Geller, possess. That some of that information came from and may still be in the possession of USVI GERS is of no moment. To the extent that USVI GERS has documents that are unique to its transactions, they are no longer relevant. To the extent that it has information duplicative of that possessed by Northern California Laborers, it would be an undue burden to require its production from a non-party.

Conclusion

For the foregoing reasons, the defendants' application for an order enforcing the April 17, 2013 subpoena issued to USVI GERS is denied.

SO ORDERED.

  
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JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
December 9, 2013

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